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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re ANDREW I., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW I.,

Defendant and Appellant.

A155453/A155707

(Alameda County
Super. Ct. No. JV02905301)

In these consolidated appeals, Andrew I. challenges the juvenile court's finding that he caused a concealed firearm to be carried in a vehicle (Pen. Code, § 25400 subd. (a)(3)),¹ contending it is not supported by substantial evidence. We affirm.

BACKGROUND

A.

On October 30, 2017, at approximately 4:44 p.m., Officer Roy Bang of the Oakland Housing Authority (Authority) Police Department was patrolling, in uniform and a marked police car, near an Authority property. Officer Bang noticed a brown pickup truck in the parking lot that did not have an Authority-issued parking permit,

¹ Undesignated statutory references are to the Penal Code.

which was “unusual” and a parking violation. Andrew and another male were sitting in the truck. Andrew was in the passenger seat.

After Officer Bang pulled into the parking lot, Andrew immediately exited the passenger side of the truck and “walked pretty fast” to another car parked elsewhere in the lot. The driver of the truck remained seated inside. Officer Bang exited his car, questioned Andrew, and checked his identification. A few minutes after initiating contact with Andrew, Officer Bang heard another responding officer, who had been questioning the truck’s driver, yell “gun.”

Officer Scott Ho testified that, while he was standing outside the passenger side of the truck, he saw the handle and hammer of a silver, semi-automatic pistol wedged between the center console of the truck and its front passenger seat, next to a moveable armrest. Officer Ho testified he could see “approximately . . . 30, 40 percent of the gun.” Both Andrew and the driver of the truck were then placed in handcuffs. Officer Bang testified that, when he removed the loaded gun from the truck, he could see the grip and the trigger. After being read his *Miranda* rights,² Andrew admitted to an officer that the gun was his. He said he had found the gun and did not think it was real.

B.

The Alameda County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602), which alleged Andrew committed two felonies: carrying a loaded firearm in a vehicle (§ 25850, subd. (a); count one) and causing a concealed firearm to be carried in a vehicle (§ 25400, subd. (a)(3); count two).

After a contested jurisdictional hearing, the juvenile court denied Andrew’s motion to suppress and sustained both counts. At disposition, the court declared Andrew a ward of the court and imposed formal probation.

DISCUSSION

Andrew argues substantial evidence does not support the juvenile court’s jurisdictional finding on count two—causing a concealed firearm to be carried in a car

² *Miranda v. Arizona* (1966) 384 U.S. 436.

(§ 25400, subd. (a)(3)). Specifically, he contends the People presented insufficient evidence that the gun was “concealed” because both Officer Ho and Officer Bang saw the gun. In the alternative, he maintains there was no substantial evidence he was the person responsible for concealing the gun. We disagree.

When faced with a substantial evidence challenge, we “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) “ ‘This court must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify the trial court’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] . . . [¶] Before the judgment of the trial court can be set aside for insufficiency of the evidence . . . , it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it.’ ” (*Ryan N.*, at p. 1372.)

Section 25400, subdivision (a)(3), makes it a crime to cause any pistol or other firearm capable of being concealed on the person “to be carried concealed within any vehicle in which the person is an occupant” Complete concealment is not required; substantial concealment is sufficient. (See *People v. Hale* (1974) 43 Cal.App.3d 353, 356 [reasonable cause to suspect violation of former § 12025 despite visible pistol housing and barrel]; *People v. Wharton* (1992) 5 Cal.App.4th 72, 75 [knife concealed when “one and one-half to two inches of the blade were protruding from defendant’s pocket”]; CALCRIM No. 2522.) “ ‘A defendant need not be totally successful in concealing [the weapon] to be guilty’ ” (*Wharton, supra*, at p. 75 [Partial concealment of a firearm “in such a fashion as to make the weapon readily available for use as a firearm, presents a threat to public order comparable to concealment of the entire firearm.” (*Hale, supra*, at

p. 356.]) However, “[a] firearm carried openly in a belt holster is not concealed within the meaning of this section.” (§ 25400, subd. (b).)

Officer Ho testified that the gun was wedged between the passenger seat and the center console and that only 30 to 40 percent of the gun was visible. Ho is a police officer, who himself carried a department-issued firearm. That Officer Ho was able to recognize the gun within a few minutes of Officer Bang contacting Andrew, and while standing just outside the passenger door of the truck, does not necessarily mean members of the public would so easily recognize it or that the gun was not substantially concealed. Officer Bang’s testimony is likewise not dispositive, as he only saw the gun after being specifically alerted to its presence by other officers. Furthermore, Officer Bang testified that the pistol was wedged in between the passenger seat and console in a way that made only the grip and trigger visible. The juvenile court could reasonably infer from the officers’ testimony that the pistol was substantially concealed.

Similarly, the presence of another person in the truck is not fatal to the juvenile court’s jurisdictional finding. Officer Bang testified he saw Andrew in the passenger seat and then, after seeing a marked patrol car approach, Andrew quickly walked away. Officers then found the gun wedged next to the passenger seat, where Andrew had been sitting only minutes earlier. When questioned, Andrew admitted the gun was his. There may be no direct evidence regarding who concealed the gun. However, the juvenile court could reasonably infer from the circumstantial evidence that Andrew caused the gun to be concealed within the truck. (See *People v. Clark* (2011) 52 Cal.4th 856, 943 [“ ‘Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.’ ”].) Substantial evidence supports the jurisdictional finding.

DISPOSITION

The judgment is affirmed.

BURNS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

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